

AMENDED IN SENATE APRIL 24, 2003

**SENATE BILL**

**No. 300**

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**Introduced by Senator Karnette**

February 19, 2003

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An act to add Section 2912.5 to the Penal Code, relating to foreign prisoners.

LEGISLATIVE COUNSEL'S DIGEST

SB 300, as amended, Karnette. Foreign prisoners.

Existing law generally regulates the transfer of prisoners between various state, local, and federal facilities, and the transfer of undocumented felons, as specified.

The bill would make findings and declarations of the Legislature in regard to the transfer of foreign prisoners pursuant to various international treaties, including the 1983 Council of Europe Convention on the Transfer of Sentenced Persons. This bill would set forth conditions for the transfer of foreign prisoners by the Board of Prison Terms and circumstances requiring the board to transfer foreign prisoners, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 2912.5 is added to the Penal Code, to
- 2 read:
- 3 2912.5. (a) The Legislature finds and declares the following:
- 4 (1) The purpose of the 1983 Council of Europe Convention on
- 5 the Transfer of Sentenced Persons, to which the United States was

1 an original sponsor and signatory, is to facilitate the transfer of  
2 foreign prisoners to their home countries. The treaty provides a  
3 simple, speedy and flexible mechanism for the repatriation and  
4 continued incarceration of prisoners. The United States was  
5 actively involved in the elaboration of the text of the convention,  
6 which was warranted by a number of high profile cases where  
7 there was strong public interest in bringing United States citizens  
8 back to the United States to serve their sentences on American soil.  
9 Other similar treaties establish procedures for prisoner transfers  
10 between the United States and Canada, Mexico and the  
11 Organization of American States. In all existing transfer treaties,  
12 the subject prisoner, the sending state and the receiving state must  
13 agree to the transfer.

14 (2) California has acknowledged prisoner transfer treaties in  
15 Section 12012.1 of the Government Code, which authorizes the  
16 Governor to approve transfers when a treaty is in force providing  
17 for them. Further, Section 2912 of the Penal Code specifically  
18 mandates the Board of Prison Terms to “notif[y] each  
19 undocumented felon ... that he or she may be eligible to serve his  
20 or her term of imprisonment in his or her country of origin as  
21 provided in federal treaties.” Similarly, the Board of Prison Terms  
22 must “actively encourage” undocumented foreign prisoners to  
23 apply for return to their countries of origin.

24 (3) There exists a large number of foreign prisoners in the  
25 California penal system who contribute significantly to the overall  
26 prison population, and there would be substantial cost savings for  
27 the California taxpayer if these prisoners were transferred to their  
28 countries of origin.

29 (4) Since the ratification of the Council of Europe Convention  
30 in 1985 there have been extremely few transfers of foreign  
31 prisoners from California, and this dearth of transfers is of concern  
32 to important trading partners of California and critical partners of  
33 the United States in the International Coalition Against Terrorism,  
34 including, but not limited to, Canada and Member States of the  
35 European Union. One reason given for this situation is that there  
36 rarely is equivalency between California sentences and the  
37 sentences imposed for similar offenses in receiving states.  
38 However, this situation is anticipated in the convention and similar  
39 treaties. The United States government routinely transfers foreign  
40 prisoners, including those with indeterminate sentences, for



1 continued incarceration even though shorter sentences may result.  
2 The opposite also results; American citizens are routinely returned  
3 home to serve out their sentences, which on occasion may be  
4 shortened under federal sentencing rules and practices.  
5 Furthermore, some signatories to the convention voluntarily  
6 choose to enforce the sentence imposed by the court of the  
7 sentencing state and thus similar sentences result.

8 (5) To assure that the convention and similar treaties are  
9 observed and to honor California's relations with its international  
10 partners, California must exercise a greater degree of flexibility in  
11 its approach to prisoners eligible for transfer under these treaties  
12 than it has in the past.

13 (6) It is the intent of the Legislature in enacting this measure to  
14 expedite future transfers *and to promote the reintegration of*  
15 *foreign prisoners into their country of origin for the purpose of*  
16 *reducing the possibility that they will attempt to reenter this*  
17 *country after completing their sentences.*

18 (b) The Governor or the Governor's designee as authorized in  
19 Section 12012.1 of the Government Code shall transfer foreign  
20 prisoners under the following conditions:

21 (1) The United States Department of Justice has approved the  
22 transfer.

23 (2) In the instances of foreign prisoners who are eligible for  
24 transfer under an existing treaty, such as the Council of Europe  
25 Convention on the Transfer of Sentenced Persons and bilateral  
26 transfer treaties with Mexico and Canada, the Governor or the  
27 Governor's designee as authorized in Section 12012.1 of the  
28 Government Code shall expeditiously transfer a prisoner to federal  
29 custody for transfer to the prisoner's country of origin when that  
30 prisoner has made an application for transfer which is supported  
31 by the receiving state unless there is a substantial difference  
32 between the remainder of the sentence to be served in California  
33 and the sentence to be served in the receiving state as determined  
34 by the rules, laws and procedures of the receiving state as provided  
35 for under an existing treaty.

36 (3) In instances in which there is a substantial difference  
37 between the remainder of the sentence to be served in California  
38 and the sentence to be served in the receiving state as determined  
39 by the rules, laws, and procedures of the receiving state as  
40 provided for under an existing treaty, the Governor or the

1 Governor's designee as authorized in Section 12012.1 of the  
2 Government Code shall accept as a sufficient guarantee and shall  
3 proceed expeditiously with a prisoner's transfer to federal custody  
4 for transfer to the prisoner's country of origin if the Minister of  
5 Justice, Attorney General, or similar ranking law enforcement  
6 officer of the receiving state does all of the following in writing:

7 (A) Agrees to receive the prisoner.

8 (B) Agrees that, for a prisoner with an indeterminate sentence,  
9 the receiving state will not release the prisoner earlier than when  
10 the prisoner would have been eligible for parole had the prisoner  
11 remained in the California corrections system, as determined  
12 pursuant to Division 2 (commencing with Section 2000) of Title  
13 15 of the California Code of Regulations.

14 (C) Agrees that, for a prisoner serving a determinate sentence,  
15 the receiving state will not release the prisoner earlier than when  
16 the prisoner would have been eligible for parole as determined  
17 with consideration for sentence adjustments under Article 2.5  
18 (commencing with Section 2930) of Title 1 of Part 3 of the Penal  
19 Code, paragraph (5) of subdivision (c) of Section 667 of the Penal  
20 Code, paragraph (5) of subdivision (a) of Section 1170.12 of the  
21 Penal Code, or any other applicable statutory provision controlling  
22 time served on a determinate sentence.

23 (D) Indicates that an individualized determination has been  
24 made that the prisoner has a strong attachment to the receiving  
25 state through one or more family members or other longstanding  
26 personal relationships in the receiving state.

27 (E) Indicates the receiving state's assessment that these family  
28 members or other personal relationships will facilitate the  
29 rehabilitation of the prisoner and his or her successful reentry into  
30 the receiving state's society.

